

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

United States of America,

Plaintiff,

v.

Criminal Case No. 17-20469

Gregory Hendon,

Sean F. Cox

United States District Court Judge

Defendant.

_____ /

OPINION & ORDER
DENYING DEFENDANT’S MOTION FOR COMPASSIONATE RELEASE

In this criminal action, Defendant Gregory Hendon (“Defendant”) was convicted of Use and Carry of a Firearm During and Relation to a Drug Trafficking Crime Causing Death and Crimes Of Violence Causing Death and was sentenced to 180 months of imprisonment. The matter is before the Court on Defendant’s *pro se* Motion for Compassionate Release under 18 U.S.C. § 3582(c)(1)(A), which is based upon concerns about the ongoing novel coronavirus pandemic (“COVID-19”). This motion asks the Court to allow Defendant to serve the remainder of his sentence at home because he is concerned that he could contract the virus, and that he may be vulnerable to severe illness if he were to contract it. The Court concludes that a hearing is not warranted and orders that the motion will be decided based upon the briefs. As explained below, the Court shall DENY the motion.

BACKGROUND

In this criminal case, Defendant pleaded guilty to two one count of Use and Carry of a Firearm During and Relation to a Drug Trafficking Crime Causing Death and Crimes Of Violence Causing Death, in violation of 18 U.S.C. § 924(c). This Court sentenced Defendant to

180 months of imprisonment. (*See* 3/6/20 Judgment).

On November 23, 2020, Defendant filed his *pro se* Motion for Compassionate Release. (ECF No. 236).

Defendant is now forty-one years old. He is currently housed at Greenville FCI and has a projected release date of May 3, 2030. Defendant filed his Motion for Compassionate Release asserting that he is heightened risk of more serious illness, if he were to contract COVID-19, because of his obesity and hypertension

The Government acknowledges that Defendant has met the exhaustion requirement. It concedes that Defendant suffers medical conditions that are established to place him at increased risk of severe illness from the virus. But the Government notes that Hendon has already been infected with COVID-19 and has recovered. The Government also contends the motion should be denied based upon a consideration of the § 3553(a) factors.

ANALYSIS

“The ‘compassionate release’ provision of 18 U.S.C. § 3582 allows district courts to reduce the sentences of incarcerated persons in ‘extraordinary and compelling’ circumstances. 18 U.S.C. § 3582(c)(1)(A).” *United States v. Michael Jones*, 980 F.3d 1098, 1100 (6th Cir. Nov. 20, 2020).

“The passage of the First Step Act in 2018 expanded access to compassionate release by allowing inmates to bring compassionate-release motions on their own behalf.” *United States v. Elias*, ___ F.3d. ___, 2021 WL 50169 at *1 (Jan. 6, 2021).

“An imprisoned person may file a motion for compassionate release after (1) exhausting the BOP’s administrative process; or (2) thirty days after the warden received the compassionate

release request – whichever is earlier.” *Jones, supra*, at 1106. Here, the Government has waived the exhaustion requirement and, therefore, this Court may consider Defendant’s motion.

The United States Court of Appeals for the Sixth Circuit has held that sentence-modification decisions pursuant to § 3582(c)(1)(A) embody a three-step inquiry:

Before granting a compassionate-release motion, a district court must engage in a “three-step inquiry:” the court must “find” that “extraordinary and compelling reasons warrant [a sentence] reduction,” ensure “that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission,” and “consider[] all relevant sentencing factors listed in 18 U.S.C. §3553(a).” *United States v. Jones*, 980 F.3d 1098, 1101 (6th Cir. 2020) (citing 18 U.S.C. §3582(c)(1)(A)). If each of those requirements are met, the district court “may reduce the term of imprisonment,” but need not do so. 18 U.S.C. §3582(c)(1)(A).

Elias, supra, at * 1.

At step one, a court must find whether “extraordinary and compelling reasons” warrant a sentence reduction. 18 U.S.C. § 3582(c)(1)(A)(I).

“At step two, a court must ‘find[]’ whether ‘such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.’” *Jones, supra*, at 1108. (quoting 3582(c)(1)(A)) (emphasis added). But the Sixth Circuit has held “that § 1B1.13 is not an applicable policy statement for compassionate-release motions brought directly by inmates, and so district courts need not consider it when ruling on those motions.” *Elias, supra*, at *2. “And, in the absence of an applicable policy statement for inmate-filed compassionate-release motions, district courts have discretion to define ‘extraordinary and compelling’ on their own initiative.” *Id.* That means that, “[u]ntil the Sentencing Commission updates § 1B.13 to reflect the First Step Act, district courts have full discretion in the interim to determine whether an ‘extraordinary and compelling’ reason justifies compassionate release when an imprisoned

person files a § 3582(c)(1)(A) motion.” *Jones, supra*, at 1109. Because Defendant’s compassionate release motion was filed by an incarcerated person, this Court “may skip step two of the § 3582(c)(1)(A) inquiry and ha[s] full discretion to define ‘extraordinary and compelling’ without consulting the policy statement in § 1B1.13.” *Jones, supra*.

“At step three, ‘§ 3582(c)[(1)(A)] instructs a court to consider any applicable § 3553(a) factors and determine whether, in its discretion, the reduction authorized by [steps one and two] is warranted in whole or in part under the particular circumstances of the case.’” *Jones, supra*, at 1109.

The Sixth Circuit has explained that, “in *granting* a compassionate-release motion, district courts must address all three steps.” *Elias, supra*, at *2 (emphasis added). But it has also clarified that “district courts may *deny* compassionate-release motions when any of the three prerequisites listed in § 3582(c)(1)(A) is lacking and do not need to address the others.” *Id.* (emphasis added).

Here, Defendant contends that his request for compassionate release should be granted because his medical conditions, in light of the ongoing pandemic, constitute extraordinary and compelling circumstances.

This Court agrees with other courts that have concluded that the COVID-19 pandemic alone does not justify compassionate release. *See, e.g., United States v. Shah*, No. 16-20457, 2020 WL 1934930, at *2 (E.D. Mich. April 22, 2020) (“[S]peculation as to whether COVID-19 will spread through Defendant’s detention facility ..., whether Defendant will contract COVID-19, and whether he will develop serious complications, does not justify the extreme remedy of compassionate release.”); *see also United States v. Raia*, 954 F.3d 594, 597 (3d Cir.

2020) (“[T]he mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release[.]”).

Here, Defendant asserts that he is heightened risk of more serious illness, if he were to contract COVID-19, because of his obesity and hypertension. The Government concedes that Defendant suffers medical conditions that are established to place him at increased risk of severe illness from the virus. But it notes that Defendant has already been infected with the virus and recovered. In light of that, this Court does not believe that Defendant has established extraordinary and compelling circumstances.

Moreover, this Court concludes that consideration of the § 3553(a) factors weighs against granting compassionate release in this particular case in any event. *United States v. Ruffin*, 978 F.3d 1000, 1008 (6th Cir. Oct. 26, 2020) (“Even when extraordinary and compelling reasons exist, the statute leaves district courts with discretion to deny relief under a balancing of the sentencing factors in 18 U.S.C. § 3553(a).”).

The nature and circumstances of Defendant’s offenses *weigh strongly* against his release. Defendant was involved in a drug-related murder of an unarmed victim. This is a very serious and troubling offense.

And the conviction in this case is not an isolated event. Defendant has a lengthy criminal history that began at age nineteen. It includes prior convictions for drug offenses, firearms possession, and receiving and concealing stolen property. Defendant has violated previous terms of probation and, in fact, was on parole when he participated in the murder at issue in this case.

This Court does not believe that releasing Defendant after serving only approximately 20% of his sentence would promote respect for the law, provide just punishment, afford adequate

deterrence, or protect the public from further crimes of Defendant. In sum, this Court finds that Defendant is not an appropriate candidate for the extraordinary remedy of compassionate release.

CONCLUSION & ORDER

For the reasons set forth above, **IT IS ORDERED** that Defendant's Motion for Compassionate Release is **DENIED**.

IT IS SO ORDERED.

s/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: March 9, 2021